



## **ARMY CONTRACTING AGENCY**

### **Unauthorized Commitments and Ratification Process Guide**

**June 2004**

## Unauthorized Commitments and Ratification Process Guide

This guide provides Army Contracting Agency (ACA) customers a better understanding of why unauthorized commitments are of concern to the Army and how to avoid making an unauthorized commitment. The guide also explains the procedures that must be followed to take corrective action for an unauthorized commitment and make payment to the contractor. In addition, it provides ACA contracting personnel information on how the ratification process must be completed.

An "unauthorized commitment" is defined at the Federal Acquisition Regulation [FAR 1.602-3\(a\)](#) as "an agreement or purchase that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government." [FAR 1.602-1](#) provides ratification contract authority only to an appointed Contracting Officer within their delegated authority.

"Ratification" as defined in [FAR 1.602-3\(a\)](#) "means the act of approving an unauthorized commitment by an official who has the authority to do so." Ratification procedures provided in [AFARS 5101.602-3-90](#), as supplemented by the Army Contracting Agency (ACA) [Acquisition Instructions \(AI\) 5101.601](#) will be used to process all unauthorized commitments subject to ACA acquisition procedures.

Unauthorized commitments are a growing problem within the Army. The ratification process is time-consuming, requires considerable documentation, and often damages the Government's ability to conduct future business with the firms involved. Unauthorized commitments represent an unwarranted expense to the Army budget because:

- The administrative effort required to process the ratification always far exceeds that required to purchase the item or service using appropriate procedures,
- Many items and services may be purchased at a better price when competed in the marketplace, and
- The normal acquisition process weeds out items that should not be purchased.

The Government can only avoid unauthorized commitments through attention to detail and strict adherence to official guidance by personnel throughout the chain of command. When an unauthorized commitment has taken place, the "committer" and the chain of command must understand the ratification process, the unauthorized commitment investigation process, and the actions required for final disposition of the transaction.

Personnel who do not have authority to commit the Government must not make any statements that could be interpreted by a vendor as a commitment to either commence work or to provide services/supplies. All individuals who deal with commercial businesses must be aware of the policies to prevent problems in the procurement process and embarrassment to the Government. All ranks of government employees, whether

civilian or military, must abide by the same rules and assure that only "authorized" personnel make financial commitments for the Government.

***Common causes of unauthorized commitments include:***

- An unauthorized individual does not take the time to process a requisition to contracting or to follow procedures for a Government Purchase Card (GPC) purchase. The individual may be lazy or in a hurry to "please the boss." Sometimes these individuals use the premise that "asking for forgiveness" is easier/faster than doing it right the first time. Nothing could be further from the truth. In addition to delays and extra work, government personnel who make a financial commitment when adequate funds are not available may be subject to serious administrative and criminal penalties under the Anti-deficiency Act. Potential violations of the Anti-deficiency Act are addressed during the unauthorized commitment evaluation and ratification process. See the ASA(FM&C) Financial Operations (FO) Anti-deficiency Act (ADA) website at <http://www.asafm.army.mil/fo/fod/ada/ada.asp> for additional information.
- A GPC cardholder places an order that exceed his/her authority.
- A vendor mistakes a request for information as an order, ships the item, the receiver does not realize it is an improper order and accepts the item rather than reject and return the item.
- An unauthorized individual approves work above the scope or dollar value of an existing contract. Note: sometimes these unauthorized actions are corrected under the contract's "Disputes" clause instead of the ratification process. The contracting officer will review the circumstances and determine the proper process.
- A contractor continues to perform a service contract or provide leased/rented equipment after the expiration date of the contract. This frequently occurs on yearly services/maintenance/lease type contracts for which there is a continuing need. Often the dollar value of these contracts is fairly low and the services so much a part of the organizational operation that it becomes, in effect, invisible - thus forgotten about.

***Typical questions about unauthorized commitments include:***

*What is my role in obtaining the supplies and services my organization needs?*

Obviously, as the requiring agency, you play a key role in the acquisition process. One of your responsibilities in this process is to locate sources (vendors) and obtain price estimates from those sources. You then include that information on the requisition (either electronic or hardcopy). At that point, your responsibility and authority to deal with the vendor must be exercised exclusively through the contracting officer.

There is a definite distinction between obtaining price estimates and actually placing an order with a vendor. Occasionally, government employees cross the line and violate public law. They are potentially setting themselves up to be held financially responsible either to the Government or to the vendor. Whether it is intentional or not is irrelevant to the determination of whether the action is an unauthorized commitment. When someone other than an appointed Contracting Officer, commits the U.S. Government, an unauthorized commitment has occurred and the "perpetrator" may receive administrative and criminal sanctions under the Anti-Deficiency Act.

*How do I know if I've made an unauthorized commitment?*

If you think you've crossed the line, you probably have. Some key signals would be the vendor offering to send you the products, agreeing on a delivery date, discussing payment terms or negotiating price. Remember that you are only contacting the vendor for a price estimate.

Problems usually surface when the vendor asks for payment and there is no existing contract. Payment cannot be made unless a Contracting Officer has awarded a contract or an authorized GPC holder acting within his or her delegation of authority has ordered the item(s).

*How are unauthorized commitments rectified?*

Unauthorized commitments are rectified through a process known as "ratification." Ratification is a legal and regulatory process that makes the unauthorized commitment legal within the constraints of fiscal policy. The outcome of the ratification process is a contract that legally binds the Government.

*Are all unauthorized commitments ratified?*

No. The employee/soldier may be held personally liable for payment to the vendor. This situation is most often seen when the individual takes an illegal or improper action in making the unauthorized commitment. For example: it is improper to pay for contractor employee's lunch during a "working luncheon." Another example of an unauthorized commitment is when a government employee makes an unauthorized commitment of appropriated funds for the purchase of a computer intended for personal use rather than official use.

*What can I do to decrease the chances of making an unauthorized commitment?*

Make sure the vendor knows you are not authorized to place orders. We recommend a standard disclaimer when corresponding with vendors that clearly states that you are requesting estimated prices and availability for planning purposes only. Also recommend you get your supporting ACA Contracting Officer involved early in the planning process.

### *What happens during the ratification process?*

After the Contracting Officer has been notified of a possible unauthorized commitment, all routine procurement action will be stopped and the unauthorized commitment/ratification process begins. The Contracting Officer will then begin gathering all available information on the unauthorized commitment. At this point, cooperation within the chain of command is essential for resolution. Next, the activity must document the chain of events leading up to the unauthorized commitment. The individual committing the unauthorized commitment must document how the unauthorized commitment occurred; the supervisor must then endorse the narrative and provide corrective action taken or to be taken. The action will then be reviewed within the contracting chain to determine if it should be ratified and if adequate corrective action has been taken to ensure the situation is not repeated. See the following procedures for the entire step-by-step ratification process:

#### **Ratification Procedures:**

Follow basic ratification procedures outlined in [AFARS 5101.602-3 and 5101.602-3-90](#). In addition to the AFARS ratification procedures, the following clarifications and/or additional information is provided to complete the ratification process:

- Documentation should address when the unauthorized commitment was identified.
- Concurrence officials, referred to as the "Commander or Agency Head (or designee)" may be interpreted to mean the unit commander, director, or activity chief (first O6 or equivalent in the individual's chain of command).
- The concurrence official shall also describe attempts to resolve the unauthorized commitment prior to requesting ratification (i.e. returning merchandise, individual paying from personal funds, etc.) and special remedial corrective action and/or disciplinary action taken.
- The Contracting Officer shall document that the limitations established at FAR [1.602-3\(c\)\(1-7\)](#) are satisfied.
- A written review of the unauthorized commitment documentation and a recommendation whether the acquisition may be ratified under provisions of FAR/AFARS shall be obtained from the supporting legal office and included in the unauthorized commitment file.
- Ratification actions in excess of \$10,000 require approval by higher headquarters and shall be endorsed by the Installation Commander, Garrison Commander, Commandant or activity Director or Manager.

- The Director of the supporting ACA Contracting office will provide periodic summary reporting of unauthorized commitments to the senior level of command supported. The reporting process should provide the impact of unauthorized commitments on the commander's organization in terms of administrative time and dollars lost. In addition the need to reduce unauthorized commitments within their activities shall be stressed. This reporting process will also provide ACA metrics tracking data. (See AI 5101.601)
- After ratification, the GPC may be used to satisfy the commitment if the amount of payment is within the cardholder's authority; if the payment is made in the same fiscal year as the commitment; and if the commitment itself is properly chargeable to the current fiscal year. If prior fiscal year funds are required to satisfy the commitment, a purchase order, or other formal contractual instrument, payable through government vendor payment channels, will be required.
- Each contracting office shall keep a log of all unauthorized commitments completed within the fiscal year. We recommend setting up an accessible office file within the PD2 Standard Acquisition System.
- All documentation of unauthorized commitments shall be filed with the final order that is executed for payment and will be maintained for a minimum of 3 years after payment. See contract retention requirements provided by [FAR 4.805](#).